

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARSHALL, JR., *et al.*, : 19-CV-04741 (RRM)
Plaintiffs, :
v. : 225 Cadman Plaza East
MARINE BULKHEADING, INC., *et al.*, : Brooklyn, New York
Defendants. : December 17, 2019
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TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Proceedings began at 11:06 a.m.)

2 THE CLERK: Civil cause for initial conference,
3 Marshall, Jr., et al. v. Marine Bulkheading, Inc., et al.,
4 docket number 19-CV-04741.

5 Would you all please state your appearances for the
6 record starting with the plaintiffs?

7 MS. FORRESTER: Tana Forrester from Shulman Kessler
8 for the plaintiff.

9 THE COURT: Good morning.

10 MR. BARBARO: Stephen Barbaro from Alter & Barbaro,
11 26 Court Street, Brooklyn, New York for the defendants.

12 THE COURT: Good morning.

13 MR. BARBARO: Morning.

14 MR. CUOMO: John Cuomo, 11 Fern Drive, Commack, New
15 York for all defendants, co-counsel, along with Alter &
16 Barbaro.

17 THE COURT: Good morning.

18 MR. CUOMO: Morning.

19 THE COURT: All right, folks.

20 So Ms. Forrester, I've read the complaint. It goes
21 into some detail. What, if anything, should I know to get up
22 to speed beyond what's in the complaint?

23 MS. FORRESTER: There's one thing to get up to speed
24 with and that's if we are going to engage in -- in substantial
25 settlement discussions, we need payroll documents.

1 THE COURT: Okay. Well, I'll get to discovery and
2 settlement later, but just in terms in factually you've laid
3 out in detailed the cause of action. What are your clients
4 doing now? Tell me about the damages you claim they've
5 suffered.

6 MS. FORRESTER: So two of my clients are fully
7 employed right now and they are making more money than they
8 were.

9 THE COURT: Okay.

10 MS. FORRESTER: There were periods of unemployment
11 for all of the clients. One client has not been reemployed
12 since he was terminated and one client was employed, lost that
13 employment, was laid off because business was slow and has
14 not --

15 THE COURT: I take it the new employment would cut
16 off any damages after that point. In other words, if he got a
17 new job and then lost that job you can't attribute the loss of
18 the income at that point to the plain -- to the defendants,
19 right?

20 MS. FORRESTER: Well, it was our position that
21 the -- that the front pay still exists, even though he got a
22 new job.

23 THE COURT: Um-hum.

24 MS. FORRESTER: Once he then becomes unemployed that
25 he still has front paid damages because he if not for the

1 discrimination and retaliatory actions of the --

2 THE COURT: All right. I understand the theory.
3 I'm not going to rule on it. I just want to know.

4 So what do you say the economic damages are?

5 MS. FORRESTER: So for each plaintiff the economic
6 damages are slightly different because of their employment.

7 THE COURT: Yeah, but ballpark.

8 MS. FORRESTER: And that they all are planning on
9 undergoing treatment, although they have not --

10 THE COURT: Okay. That was going to be my next
11 question.

12 MS. FORRESTER: Okay. So would you like me to lay
13 out for you --

14 THE COURT: Ballpark.

15 MS. FORRESTER: Ballpark.

16 THE COURT: Yeah.

17 MS. FORRESTER: All right. So for John Williams
18 it's approximately \$203,500; for Marshall, Jr., it's \$190,000;
19 for Marshall III, 100 -- sorry -- that would be \$190,000. For
20 Marshall III it's \$170,000 and for Rayjay James it's \$210,000.

21 THE COURT: Okay. So ballpark around 200 for each?

22 MS. FORRESTER: Yes.

23 THE COURT: Okay. And what had there annual income
24 been when they were working?

25 MS. FORRESTER: Each one had a slight -- slightly

1 different income.

2 THE COURT: Again, ballpark.

3 MS. FORRESTER: Approximate -- all right. So for
4 John Williams it was approximately -- when I averaged the
5 years that he worked --

6 THE COURT: Yeah.

7 MS. FORRESTER: -- \$45,000 per year. For Marshall,
8 Jr., it was \$40,000.

9 THE COURT: Okay. Again, I'm just trying to get an
10 order of magnitude.

11 MS. FORRESTER: Okay.

12 THE COURT: All around the same order of magnitude?

13 MS. FORRESTER: Marshall III actually made less than
14 the others.

15 THE COURT: Okay.

16 MS. FORRESTER: So he was making approximately 31.

17 THE COURT: And when were they terminated?

18 MS. FORRESTER: So for Williams, Marshall, Jr., and
19 James they were terminated in approximately April 2019 and
20 Marshall III it's earlier than that. I believe it's December.

21 THE COURT: Okay. All right. So the bulk -- it
22 sounds like the bulk of the economic damages are based on
23 front pay.

24 MS. FORRESTER: Front pay and emotional damages.

25 THE COURT: Well, the numbers you gave me, around

1 200K per --

2 MS. FORRESTER: Yeah.

3 THE COURT: -- plaintiff, I was asking about
4 economic damages. Were you figuring in --

5 MS. FORRESTER: Oh, I was including all in at the
6 settle -- at -- except for the differential pay number.

7 THE COURT: Okay. All right. And to the extent
8 they get treatment I assume you're going to provide releases
9 for records, yes?

10 MS. FORRESTER: Yes.

11 THE COURT: Okay. All right. And, oh, a couple
12 other things. What, if anything, were they told was the
13 reason for the terminations?

14 MS. FORRESTER: For Marshall, Jr., it was because he
15 was refusing to leave a car, so insubordination.

16 THE COURT: Um-hum.

17 MS. FORRESTER: For John Williams it was because he
18 refused to take a urine test.

19 THE COURT: Um-hum.

20 MS. FORRESTER: For --

21 THE COURT: And had he refused?

22 MS. FORRESTER: What?

23 THE COURT: Had he refused?

24 MS. FORRESTER: He had refused; however, it was --
25 there was an unemployment case about this and it was decided

1 that this -- this urine test situation came up after he had
2 both been injured on the job and also had complained about
3 the --

4 THE COURT: I just want to get a sense of --

5 MS. FORRESTER: -- racial discrimination.

6 THE COURT: -- where the factual issues are. Go
7 ahead. You had -- you were going to tell me about the others.

8 MS. FORRESTER: And Mr. James, I think he was just
9 told it wasn't working out.

10 THE COURT: Okay. In any of this in documents or
11 orally?

12 MS. FORRESTER: Oh, it's all -- it's all orally.

13 THE COURT: Okay. You also in your amended
14 complaint refer to a threat of litigation that came from
15 opposing counsel. You quote partially from it. You haven't
16 given me the letter. You don't need to do that, but I'm just
17 curious. Does it cite any basis for a lawsuit other than
18 allegations made in the complaint in this case?

19 MS. FORRESTER: No.

20 THE COURT: Okay. All right. And from your
21 perspective any discovery issues I'll need to take up?

22 MS. FORRESTER: Well, we haven't come to an
23 agreement about ESI yet. We've discussed it but we still need
24 to, you know, go back and forth with edits over that
25 agreement.

1 THE COURT: Okay.

2 MS. FORRESTER: And we have talked about it. It
3 seems like it, that they're going to provide everything that
4 I'm asking for with the payroll documentation, but I don't --

5 THE COURT: There are no disputes that you're aware
6 of?

7 MS. FORRESTER: Yeah.

8 THE COURT: Okay.

9 MS. FORRESTER: And the only issue would be if we
10 wanted to, you know, do mediation or enter into settlement
11 discussions before discovery got started. There are some
12 limited discovery that we would need.

13 THE COURT: All right. Mr. Cuomo and Mr. Barbaro, I
14 don't know who wants to speak. You're both welcome to.

15 First of all, I'm just curious. You're representing
16 all the defendants and the complaint not only attributes
17 racial slurs to one of them, but attributes to another -- or I
18 think a couple of others -- apologies for those racial slurs
19 and statements about, you know, what would be done about them.
20 So what can you tell me about potential conflicts among your
21 clients about what to admit, what not to admit, litigation
22 strategies because there seems like there's at least a
23 potential conflict there.

24 MR. BARBARO: Well, at this stage -- and this is why
25 we have two counsel --

1 THE COURT: Well, but you're both representing all
2 the defendants, so --

3 MR. BARBARO: I know, but you might end up --

4 THE COURT: -- there -- so that doesn't do anything
5 to alleviate the conflict issue.

6 MR. BARBARO: I know. We might end up splitting our
7 duties in terms of this thing.

8 THE COURT: No, you certainly -- look, if there's a
9 conflict --

10 MR. BARBARO: Yeah.

11 THE COURT: -- you won't resolve it by having one of
12 you represent some and some -- and one represent the others
13 because right now --

14 MR. BARBARO: Yeah.

15 THE COURT: -- you're representing all. So maybe
16 that there's some -- some or all potentially defendants that
17 you can't represent but you can't just divide them up between,
18 that wouldn't resolve anything. But tell me about how
19 ethically you are -- I'm not challenging your efforts but --
20 because I'm sure you have done what you need to do looking
21 into the issue and giving your clients a full explanation of
22 it and getting informed consent, so I just want you to tell me
23 what you've done and how you've resolved it to date.

24 MR. BARBARO: Well, we have -- in terms of our
25 investigation we have not discovered anything that we would

1 think is a conflict of interest. I know what --

2 THE COURT: Well, if --

3 MR. BARBARO: Counsel is saying something different,
4 but in terms of our position --

5 THE COURT: Okay. Well, just factually. I mean,
6 did Mr. Anselmo make these racial slurs?

7 MR. BARBARO: I do not believe -- right now it's his
8 position he did not.

9 THE COURT: And so -- I forget the name of the other
10 fellows to whom complaints were made who said this shouldn't
11 happen. What do they say about those comments?

12 MR. BARBARO: Do you want to -- that's one of the
13 other -- DeSousa's.

14 MR. CUOMO: I believe you're referring to Michael
15 DeSousa in that and as far as what we've gone through there's
16 just been a general denial by all of the defendants.

17 THE COURT: I know there's a general denial, but I
18 want to know affirmatively what they say happened. They never
19 had these conversations or it didn't go as -- in the way the
20 plaintiff -- the plaintiffs allege, what?

21 MR. CUOMO: My understanding is that the
22 conversations as alleged never occurred. That's what I
23 understand and --

24 THE COURT: As alleged meaning it didn't happen at
25 all or it happened in a different way? I'm really not trying

1 to get a legal position so much as a conversation with you
2 since you know facts and I don't about what your clients say
3 did happen.

4 MR. CUOMO: Right. And what I'm trying to relay to
5 the Court is upon taking the case in and upon looking at the
6 circumstances, the exact same issues and alarm bells went off.
7 We went through and had generalized conversations related to
8 the complaint and --

9 THE COURT: Well, I'm grateful to hear about
10 generalized, but I know that you can't possibly have submitted
11 an answer that responds to allegations about specific -- no
12 statements without having specific conversations with your
13 client.

14 MR. CUOMO: Well, what I'm trying to relay is, at
15 first we went through and had generalized conversations
16 related to the complaint and then we went back and addressed
17 each individual item within the complaint as to each
18 individual defendant. And each one of them has denied that
19 the -- in terms of Mr. DeSousa denied the conversation
20 occurred.

21 THE COURT: So they never came to him and complained
22 about it to someone anyway.

23 MR. CUOMO: As far as I know and as far as my
24 compensation went with Mr. DeSousa, this conversation did not
25 occur.

1 Now, as to --

2 THE COURT: At all. In other words, there was no
3 complaint about Mr. Anselmo?

4 MR. CUOMO: My concern when --

5 THE COURT: Would you please -- look, I know you're
6 trying to be helpful. We're talking past each other. So if I
7 ask a specific question you could answer it directly and that
8 will help me understand.

9 Mr. DeSousa says there was never any complaint about
10 Anselmo and racial slurs?

11 MR. CUOMO: Again, and I --

12 THE COURT: That's a yes or no. It really is.

13 MR. CUOMO: It's no in terms of I asked him the
14 question on the basis of the complaint. In other words --

15 THE COURT: Look, you practice how you practice. I
16 can't imagine having a conversation with a client who's been
17 accused of these things and not going beyond a -- you know, an
18 affirmance or denial of a specific set of words. I want to
19 know in part to inform the decision about can I ethically
20 represent all of them.

21 MR. CUOMO: As far --

22 THE COURT: Did you have a conversation with the
23 plaintiff -- any of the plaintiffs about Anselmo making racial
24 slurs? That's the kind of conversation I --

25 MR. CUOMO: Absolutely. We went through that.

1 THE COURT: And that never happened?

2 MR. CUOMO: That never happened.

3 THE COURT: Okay.

4 MR. CUOMO: As far as -- and I went through each one
5 of the defendants and asked them about it and they said it
6 never occurred.

7 THE COURT: Okay.

8 MR. CUOMO: With respect to this particular
9 conversation that you're alleging in terms -- that -- you're
10 not alleging, but is being alleged in terms of that one of the
11 defendants, I believe went back to him and said something to
12 him when -- about issues in the field, with respect to racial
13 issues and what we had discussed then was he had never been
14 informed about racial issues as far as I know and as far as
15 I've discussed.

16 THE COURT: So the plaintiffs never said anything to
17 your clients about racial slurs?

18 MR. CUOMO: Correct. And what we did --

19 THE COURT: Okay.

20 MR. CUOMO: -- and what I did do, we went through
21 the text just to refresh his recollection to see whether or
22 not there was any -- I had asked him were there any, you know,
23 text related to this and I had gone through it to see -- you
24 know, went through the phone system to see whether or not
25 there are any text complaining of this and we didn't see

1 anything there. And then I had asked him directly, you know,
2 did this occur, did the conversation occur and he said,
3 "Look" -- he said to me something along the lines -- and I
4 don't want to testify now, but something along the lines "The
5 guys are always bitching about something in the field." I
6 said, "Well, did this occur?" and he said, "As far -- no. As
7 far -- I don't remember. I don't remember this."

8 THE COURT: Okay. Separate issue. Does the amended
9 complaint accurately quote a letter that one of you or one of
10 your colleagues sent to the plaintiffs' counsel?

11 MR. CUOMO: No.

12 THE COURT: No?

13 MR. CUOMO: And that is a letter that was drafted by
14 the general manager.

15 THE COURT: Okay. I see. But somebody on the
16 defendants' side -- does it accurately quote a letter from the
17 defendant?

18 MR. BARBARO: It does, but it -- what's being quoted
19 here is that it wasn't a threat related to anything within the
20 complaint. I believe the letter was that in the end or
21 something to that effect -- in the end when this is resolved
22 in our favor, we intend to sue the plaintiffs or whomever. I
23 don't remember verbatim. But I don't believe it was any
24 direct threat related to anything within the complaint or just
25 at the end of this when it's resolved in the company's favor

1 they intend to take action.

2 THE COURT: You know, I have the quotation from it
3 in my notes and now I'm not finding it. What -- do you
4 have --

5 MS. FORRESTER: It's Paragraph 15.

6 THE COURT: Thank you. That's what I was ask for.
7 Okay. And I take it you have the letter itself?

8 MS. FORRESTER: Yes.

9 THE COURT: Okay.

10 MS. FORRESTER: Not with me.

11 THE COURT: No, okay.

12 So MBI sent a letter -- it accurately quotes the
13 letter in Paragraph 15?

14 MR. CUOMO: I do believe it does.

15 THE COURT: Okay. And MBI intends to file its own
16 actions to seek substantial damages against plaintiffs for
17 harm and financial burden inflicted upon MBI because of these
18 false allegations. What lawsuit is available? Is it based on
19 the complaint itself or something outside the complaint?

20 MR. CUOMO: Again, I didn't write this letter --

21 THE COURT: I'm not asking you if you wrote it, but
22 you represent --

23 MR. CUOMO: I know --

24 THE COURT: -- the entity that did.

25 MR. CUOMO: I realize that and I never -- when I saw

1 the letter I was a little bit upset that anybody would do
2 that. I didn't get into it with them, though, about it. I
3 have no idea what this gentleman is intending on doing aft er
4 we're complete here.

5 THE COURT: But it is a threat of retaliation for
6 bringing the lawsuit, isn't it?

7 MR. CUOMO: I believe it's an affirmation that this
8 gentleman in the event he is successful intends to defend a
9 reputation of the company.

10 THE COURT: It's not defensive --

11 MR. BARBARO: And I would say, Your Honor --

12 THE COURT: It's not defensive. It is stating an
13 intention not to defend against an action, but to bring an
14 action.

15 MR. CUOMO: Upon the successful conclusion --

16 MR. BARBARO: Upon the successful conclusion --

17 MR. CUOMO: -- of this action.

18 THE COURT: Right. And let's assume for purposes of
19 discussion that you successfully defend this action. Is there
20 a lawsuit that can be brought that isn't completely foreclosed
21 by black letter law?

22 MR. CUOMO: Again, I --

23 THE COURT: You don't know? You think that you can
24 sue somebody for bringing a lawsuit just because the lawsuit
25 isn't successful?

1 MR. CUOMO: Well, I would imagine, Your Honor, that
2 if it turns out that these allegations are pulled out of whole
3 cloth and are simply lies or exaggerations and there is some
4 financial damage to the reputation of the company, again, I'm
5 not an attorney that handles these types of actions.

6 THE COURT: But you are an attorney and you know
7 that this is privileged. You can't sue somebody for filing a
8 lawsuit, can you?

9 MR. CUOMO: Not necessarily, no.

10 THE COURT: Okay. Learning a lot today.

11 MR. BARBARO: But, Your Honor, it was not an
12 attorney that wrote this, so I don't know --

13 THE COURT: No, but attorneys are responding to my
14 questions in defending this conduct as not being retaliatory,
15 so that's what I'm learning about, the attorneys who think
16 that that's not retaliatory. Okay. I'm learning something
17 and I'm learning that you think it may be possible to sue the
18 plaintiffs because you're not saying it's not. You're saying,
19 well, maybe in some circumstances.

20 MR. CUOMO: Again, Your Honor, there are facts and
21 circumstances that we don't know what's gone on. Whether or
22 not these statements were made outside the realm of -- and I'm
23 sure they were -- outside the realm of what are privileged
24 documents to third parties which would somehow give life to --

25 THE COURT: And that's not what I was asking about.

1 I was careful about what I asked about and you were saying,
2 well, maybe. Maybe you could sue them just for filing the
3 complaint.

4 MR. BARBARO: Your Honor, if I may, let me say this
5 directly. Okay. Let me answer the question directly and --

6 THE COURT: That would be useful.

7 MR. BARBARO: Do I think that there is an action to
8 be brought if in -- in this case is found -- is dismissed or
9 found to be a false or fraudulent case? Yes. I think there
10 could be a malicious prosecution claim. I think there could
11 be a liable claim. I think there could be other claims.

12 THE COURT: There could be held liable for filing a
13 lawsuit? My goodness. Okay.

14 MR. BARBARO: If you filed the lawsuit, Your Honor,
15 with bad intentions, with the intention --

16 THE COURT: Oh, okay.

17 MR. BARBARO: -- of liable-ing [ph.] somebody, I
18 believe the you can --

19 THE COURT: All right. All right.

20 MR. BARBARO: -- file it under state law.

21 THE COURT: All right. Okay. Well, like I say, I'm
22 learning something today. Okay. Let's talk about discovery.
23 Are there any discovery issues that you anticipate that are
24 going to be in dispute?

25 MR. BARBARO: I think we are trying to work out the

1 issue of the payroll. Of course, you know, obviously the
2 payroll involves a whole bunch of people that are not parties
3 to this -- to this action, but by the same token I see that
4 counsel needs this for use in her -- preparation of her case.
5 We're trying to work out a method that can ensure the
6 anonymity of the other employees who are not part of this
7 action and give her the information that she wants. So we
8 just have to figure out the period and just a way of
9 protecting the identity of the --

10 THE COURT: All right. But there's no dispute.
11 That's what I'm trying to find out --

12 MR. BARBARO: No, right now --

13 THE COURT: -- because if there is, we can plan for
14 it.

15 MR. BARBARO: -- no --

16 THE COURT: Okay.

17 MR. BARBARO: -- no dispute on that.

18 THE COURT: All right. On your discovery schedule I
19 didn't quite understand it. First of all, what kind of
20 experts -- you mentioned treatment and you'll get that, but
21 you have non-medical experts?

22 MS. FORRESTER: Yes. So an HR professional that
23 talks about best practices.

24 THE COURT: For what? I mean, this is --

25 MS. FORRESTER: For their pol -- like the policies

1 that -- investigatory policies that a company should have in
2 place and the policies that they did not have in place.

3 THE COURT: But is that a relevant issue or is it
4 just a matter of whether they were acting in a discriminatory
5 fashion?

6 MS. FORRESTER: Well, in the --

7 THE COURT: In the -- yeah, they could have good or
8 bad HR policies and that wouldn't tell you anything about
9 whether -- whether they were acting in a discriminatory
10 manner, right?

11 MS. FORRESTER: Yeah. I guess if they had a policy
12 and they weren't following it.

13 THE COURT: Yeah.

14 MS. FORRESTER: Yeah.

15 THE COURT: It would depend on why.

16 MS. FORRESTER: Um-hum.

17 THE COURT: Right. Again, it might be completely
18 innocuous reasons or discriminatory reasons, but I really --

19 MS. FORRESTER: We're willing to go through the --

20 THE COURT: I'm not saying you should go without.

21 I'm just trying to understand that and I still don't, but I am
22 not making at all any ruling on what you can and can't do. I
23 was just trying to understand what you have.

24 But the more pressing question I have is about the
25 schedule. You have your expert reports to be completed by the

1 end of May, fact discovery goes on for a couple of months
2 after that. And I'm sorry, not your -- both sets of experts
3 are due the same day at the end of May and then discovery goes
4 on beyond that. Tell me what you think. Typically I see the
5 parties proposing fact discovery and then a -- you know, a
6 little time on each side for responsive experts. Do you have
7 anything else in mind or what -- just tell me what you're
8 thinking so I understand it.

9 MS. FORRESTER: So I was actually -- and I'm sure
10 about this and we -- we met about it and I believe that
11 opposing counsel was thinking that after fact discovery ended
12 they would then want addition -- like from that they would
13 then speak with the experts.

14 THE COURT: But their expert report under this
15 proposal is due on May 30th. That's what I don't understand.
16 And yours is due on May 30th also. Is that just an
17 inadvertent error or is it something you guys have planned?

18 MS. FORRESTER: I believe that this may be an error
19 but I'm not sure.

20 THE COURT: But is the idea that -- on both sides
21 that you want to get the facts under your belt and then turn
22 them over to an expert?

23 MR. BARBARO: That's correct.

24 THE COURT: Okay. So would it make more sense then
25 to say six months to complete fact discovery and a month after

1 that so experts on the plaintiff side and then a month after
2 that for reports from the defendants' expert?

3 MR. BARBARO: That would be great, Your Honor.

4 THE COURT: Okay. Does that make sense to you at
5 all?

6 MS. FORRESTER: Yes, that makes sense.

7 THE COURT: Okay. Okay. So I'll do that. And in
8 turn I say that you had a date to complete expert discovery
9 beyond other discovery. If that's just expert depositions,
10 which I often say my standard order has expert depositions
11 that can take place anytime before trial, point is to close
12 discovery with the exchange of the reports so that you have a
13 record on which to move for summary judgment if anyone is
14 going to do that.

15 All right. You've mentioned settlement a couple of
16 times. Have you had any discussions about that yet?

17 MS. FORRESTER: No, we haven't had any significant
18 discussions.

19 THE COURT: Okay. I get the impression from the
20 tenor of the conversation so far on both sides that it's
21 unlikely to be useful to have settlement discussions now, but
22 I'm open to it. I'm happy to host a settlement conference or
23 refer you to mediation if you all think that would be useful.

24 MR. CUOMO: Right now we're not in that happy place,
25 Your Honor.

1 MS. FORRESTER: I think mediation would be useful,
2 but we have to -- I've suggested it and it seems as if it's --
3 their -- their clients are taking just like a no-settlement-
4 discussion position.

5 THE COURT: Okay. Well, that may change over time
6 depending on how the facts play out. So I'm not going to
7 force the issue, but I welcome you to let me know when a
8 referral to mediation or settlement conference with me would
9 be useful.

10 MR. BARBARO: Your Honor would host a settlement
11 conference?

12 THE COURT: If that's what you all want.
13 Absolutely. Is that something you're interested in now or you
14 want to get some discovery done?

15 MR. CUOMO: No, we would have -- we would have to
16 go -- I would suggest going through some discovery -- going
17 through discovery and then readdressing the issue later on.

18 THE COURT: Okay. All right. Well --

19 MR. CUOMO: I think it would be most helpful.

20 THE COURT: Okay. So -- and can I have a date in
21 early May, please?

22 MS. FORRESTER: There's one discovery issue that
23 came up -- came to my mind when the defendants were making
24 their response --

25 THE COURT: Yes, go ahead.

1 MS. FORRESTER: -- if I could just bring it up. So
2 in this case we need to be able to have comparators and
3 opposing counsel brought up the other employees remaining
4 anonymous, so that will be -- it will be difficult to identify
5 non-black comparators if the other employees are to remain
6 anonymous.

7 THE COURT: All right. Well, comparators for what
8 and I read --

9 MS. FORRESTER: There's --

10 THE COURT: Go ahead.

11 MS. FORRESTER: So one of the causes of action is
12 that my clients who are all black were being paid less than --

13 THE COURT: I see.

14 MS. FORRESTER: -- their non-black counterparts,
15 even --

16 THE COURT: Okay. So you --

17 MS. FORRESTER: -- certified welders were being
18 paid --

19 THE COURT: -- want -- yeah, got it.

20 MS. FORRESTER: -- less than the non-black certified
21 welders. So if --

22 THE COURT: They want pay comparisons.

23 MS. FORRESTER: They will need pay comparisons and
24 also we would need to know who the person is so we would
25 know --

1 THE COURT: All right. Well, I'm sure you can work
2 out a confidentiality order to --

3 MS. FORRESTER: Yes, I'm sure we could, too. I just
4 am --

5 THE COURT: You're not proposing to keep that
6 information from disclosure, are you?

7 MR. BARBARO: As far as we have it, we'll provide
8 it.

9 THE COURT: Okay. But I wasn't sure if you were
10 saying you'd provide it anonymously or with names attached.

11 MR. BARBARO: Well, my first reaction was to provide
12 a payroll sheet that says -- you know, basically omits the
13 name and --

14 THE COURT: Okay. So you did want to do it
15 anonymously.

16 MR. BARBARO: You know --

17 THE COURT: Okay.

18 MR. BARBARO: -- someone. But in terms of ethnicity
19 on the various employees -- how many employees do we have?

20 MR. CUOMO: Currently?

21 MR. BARBARO: Yeah.

22 MR. CUOMO: I'm not -- I think it's 35, 40.

23 MR. BARBARO: Okay. So we'll --

24 MR. CUOMO: It's not an unmanageable number.

25 MR. BARBARO: Yeah. And --

1 MR. CUOMO: But we're talking about, you know, past
2 employees as well.

3 MR. BARBARO: I --

4 MR. CUOMO: So we can only -- you know, there's a
5 question of how you identify and --

6 MR. CUOMO: By name, I think.

7 MR. CUOMO: No, I mean, but whether somebody
8 identifies as black or Caribbean or some other ethnicity. I
9 can only, you know, say how -- just give her a rough thing,
10 you know.

11 MR. BARBARO: I'm sure we'll work it out, but I
12 think the first step is to --

13 THE COURT: To the extent you want to have a
14 confidentiality order to protect against disclosure --

15 MR. BARBARO: Sure.

16 THE COURT: -- publicly information that shouldn't
17 be, that's fine. But in terms of sharing information among
18 yourselves, I think you avoid a lot of problems. I'm not
19 ruling on anything --

20 MR. BARBARO: No.

21 THE COURT: -- at this point, but I think we avoid a
22 lot of problems and don't take on unnecessary problems by
23 having the names disclosed --

24 MR. BARBARO: Yeah.

25 THE COURT: -- and to the extent that you can find a

1 way to convey anything that's not in the record, I'm sure
2 plaintiffs will know many of these folks, in any event. And
3 employers often have race ethnicity information as part of
4 their records. But anyway, you'll see what you have.

5 MR. BARBARO: I don't know. And like I said, this
6 is relatively small.

7 THE COURT: Yeah. Okay.

8 MR. BARBARO: You know, the HR department is --

9 THE COURT: You'll work it out and if you can't,
10 you'll bring up a motion to me.

11 Okay. So I need a date for a status conference,
12 please.

13 THE CLERK: Judge, it can be May 4th at 10 o'clock.

14 THE COURT: Okay. All right. So see you then,
15 first status conference. If everything is on track and you
16 don't have any disputes or still too early to talk settlement,
17 let me know and I can adjourn it and unless anyone has
18 anything else, I'll let you go.

19 MS. FORRESTER: Nothing else, thank you.

20 THE COURT: Thank you all. Have a good day.

21 MR. BARBARO: Thank you, Your Honor.

22 (Proceedings concluded at 11:35 a.m.)

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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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7 _____
Ruth Ann Hager, C.E.T.**D-641

8 Dated: January 31, 2020
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